

### C. Remarks

The claims are 1, 2, 4, 5, and 23-25, with claim 1 being the sole independent claim. Claims 3 and 6 have been cancelled without prejudice or disclaimer of the subject matter recited therein. Claim 1 has been amended to better define the present invention. Support for this amendment may be found, inter alia, in cancelled claim 3 and on page 8 of the originally filed specification (paragraphs [0036]-[0039] of the substitute specification). New claim 25 has been added. Support for this new claim may be found, inter alia, on page 39 of the originally filed specification (paragraph [0047] of the substitute specification). No new matter has been added. Reconsideration of the present claims is expressly requested.

Claims 1, 2, 5 and 6 stand rejected under 35 U.S.C. § 102(b) as being allegedly anticipated by U.S. Patent No. 6,265,321 B1 (Chooi). The grounds of rejection are respectfully traversed.

The presently claimed invention is related, in pertinent part, to a porous article, which comprises a porous material formed on a substrate. The porous material has a plurality of columnar pores. The area surrounding the pores is formed from amorphous Si or amorphous  $\text{Si}_x\text{Ge}_{1-x}$  ( $x \neq 0$ ). The depth direction of the columnar pores is substantially perpendicular to the substrate, and the columnar pores have a circular or elliptic cross-section in a direction parallel to the substrate. Furthermore, the average interval between the centers of adjacent pores is 30 nm or less.

Applicants respectfully submit that Chooi is substantially different from the presently claimed invention. For instance, Applicants submit that Chooi does not disclose or suggest the average interval between the centers of adjacent pores of 30 nm or less. In

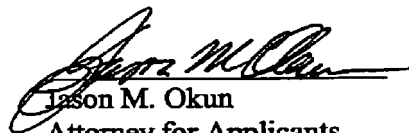
fact, this feature of the instant invention was originally recited in claim 3, which was not rejected over Chooi. Chooi, for example, in Fig. 6B, appears to disclose the intervals on the order of at least 0.5 to 1 microns, based on the space between two metal lines, which is significantly greater the presently claimed interval of not more than 30 nm. Thus, clearly, Chooi cannot affect the patentability of the presently claimed invention.

Claims 1-6, 23 and 24 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-6, 26 and 27 of co-pending Application No. 10/640,047. Applicants note that, under M.P.E.P. § 804(I)(B), if this is the only rejection remaining in the application, it should be withdrawn, so that the case can proceed to issue as a patent. Nonetheless, Applicants note that the claims in the '047 application do not recite, for instance, the cross-sectional shape of the pores.

Wherefore, Applicants respectfully request that the outstanding rejections be withdrawn and that the present case be passed to issue.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our address given below.

Respectfully submitted,

  
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